the parties is only another way of saying that it may constitute an exception to the terms of the covenant.

If the general principle is accepted, it is evident that there was a breach the moment the warranty was made, giving a right to nominal damages. The parol promise to pay off the notes could have been shown by the defendant, as it contradicted no term of the deed, and did not negative the defendant's liability. But this would only show that in paying off the incumbrance — and allowing the land to be taken by foreclosure must be regarded as payment — the plaintiff suffered no substantial damage, as had the defendant's warranty been true, and the notes formed no incumbrance, the plaintiff, being still under an obligation to pay them, would have been to the same extent out of pocket. It is clear, however, that by the understanding of the parties the defendant was not to be liable even for nominal damages. The plaintiff undertook not only to pay off the notes, but also, at least impliedly, to save the defendant harmless from any liability he might suffer from their remaining outstanding. All courts would probably recognize the first promise, to pay the notes : only the more liberal would recognize the second, to save harmless ; as, by giving the defendant an action to recoup any loss he might suffer, the deed would in effect be negatived in so far as this particular incumbrance was concerned. *Roberts* v. *Greig*, 62 Pac. Rep. 574 (Col.). This more liberal view, however, seems preferable, as it gives the intended effect to the transaction. It is not open to the objection that the terms of the deed are thereby made uncertain, as they and liability under them are admitted to the fullest extent. The promise to save harmless merely gives the defendant a right to recoup any loss he suffers through the breach of his covenant. In the principal case had such an implied promise been recognized, the court could have allowed it as a complete defence, to prevent circuity of action, and thus arrived at their result without making an exception — which in truth they must be regarded as having made — to the parol evidence rule.

Constructive Severance of Fixtures. — A recent case is interesting because it differs from the trend of modern authority as to the nature of fixtures. The subject of fixtures has always caused much confusion in the law, and this confusion the principal case in no way tends to clear up. The owner of a greenhouse and the land on which it stood sold the greenhouse and at the same time leased the land to the vendees. The sale was by parol and consequently not recorded. Subsequently the vendor mortgaged the land to the plaintiff, who had no notice of the sale. The court held that, on foreclosure, the mortgagee was not entitled to the greenhouse. *Royce* v. *Latshaw*, 62 Pac. Rep. 627 (Col.).

This result is upheld by a few decisions : *Robertson* v. *Corsett*, 39 Mich. 777 ; *Fifield* v. *Maine Central R. R.*, 62 Me. 77. The majority of the courts, however, hold that such a constructive severance, while good between the parties themselves, is not effectual against a subsequent mortgagee without notice. *Joliet Bank* v. *Adam*, 138 Ill. 483. As a matter of strict principle, the latter view seems preferable. It is a rule of law that whatever is attached to land becomes a part of the realty, and goes to the owner of the land. So when an article of personalty is attached to land, its nature changes, and it becomes a part of the freehold. But

for reasons of policy, — as to encourage tenants to make the best use of their leaseholds, — the law allows parties by contract or custom to vary this rule to a certain extent. Contract and custom, however, cannot change the nature of the articles; and while the contract may, as between the parties themselves, allow them to treat an article as personalty, yet, unless it be actually severed, it remains realty. *Prescott* v. *Wells-Fargo Co.*, 3 Nev. 91. These considerations are well brought out by the principal case. After the sale of the greenhouse, the vendee acquired a contract right in the nature of a profit, that is to say, a right to go upon the land and sever and remove the greenhouse. Its nature, however, was not changed by the sale, and it remained realty as before. As the formalities necessary to a sale of real estate were not complied with, it would seem that title had not passed. Moreover, there is a strong objection to the principal case upon grounds of policy. It is the purpose of the law to have the true title to property appear upon the public records. If the sale of the greenhouse had been made by deed and not recorded, the law would allow a subsequent mortgagee to prevail. It seems, then, against the spirit of the recording acts to allow parties to avoid them by a parol sale; especially where, as in the principal case, it operates to the detriment of innocent third parties who have advanced their money upon the faith of the public records. *Powers* v. *Dennison*, 30 Vt. 752.

Jurisdiction Quasi in Rem. — The case of *Pennoyer* v. *Neff*, 95 U. S. 714, has settled definitely, if indeed it could ever have been doubted, that a personal judgment against a defendant, who is neither domiciled nor served within the jurisdiction, is invalid. While it is true, then, that on such a judgment the defendant's property, even within the state, cannot be levied on, there are nevertheless certain ways in which such property can be dealt with by the state, although the owner is domiciled elsewhere. The state may take such property by the exercise of eminent domain; it may, if necessary, sell it for the payment of taxes; and it may equally well provide methods of having the rights to it judicially determined by its courts of law. Judicial proceedings, however, require that the property should in some manner be brought either actually or constructively before the court for adjudication, and that parties interested be given a fair chance to be heard.

A question as to what constitutes a fulfilment of the former of these requisites arose in a recent decision in Ohio, where a wife, having been deserted by her husband, brought suit to have a certain amount of alimony made a charge on her husband's property within the jurisdiction. The husband being a non-resident, service was made by publication, and a preliminary injunction was granted restraining him from disposing of the property, but no seizure or attachment took place. The court, however, proceeded and ultimately made a decree in favor of the plaintiff, charging the alimony on the defendant's property. *Benner* v. *Benner*, 58 N. E. Rep. 569. Now, although it is generally recognized that jurisdiction for divorce exists, if the plaintiff is domiciled within the jurisdiction, though there be no personal service on the defendant, yet it is well settled that no valid judgment for alimony can be given without having the defendant personally within the power of the court. *Rigney* v. *Rigney*, 127 N. Y. 408; *Lytle* v. *Lytle*, 48 Ind. 200. The court in the principal